

Introduced by Senator Poochigian

January 30, 2006

An act to amend Sections 9000, 9100, 9102, 9103, 9104, 9250, 9353, 19000, 19011, 19022, 19023, 19025, 19040, 19050, 19051, 19052, 19053, 19100, 19103, 19104, 19150, 19151, 19154, 19252, and 19255 of the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1211, as introduced, Poochigian. Estates and trusts: creditor's claims.

Existing law requires the personal representative administering a decedent's estate to provide notice to creditors of the decedent pursuant to a specified procedure. Existing law permits property to be titled in a trust, and provides that, upon the death of a settlor of a trust, the property of the deceased settlor that was subject to the power of revocation at the time of the settlor's death is subject to the claims of creditors of the deceased settlor's estate.

This bill would make various changes in the provisions described above to increase uniformity between the provisions, including (1) establishing a definition of the term "creditor" and using it to replace the term "claimant"; (2) clarifying how notice shall be given to creditors of a decedent's estate; (3) specifying the effect of certain provisions on other provisions regarding limitations of actions; (4) revising the procedure for giving notice to a creditor of a trust and lengthening the period of time that a creditor of a trust may file a claim; and (5) revising provisions pursuant to which a creditor of a trust may file, and a court may allow, a late claim.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 9000 of the Probate Code is amended to read:

9000. As used in this division:

(a) “Claim” means a demand for payment for any of the following, whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated:

(1) Liability of the decedent, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent’s death, whether assessed before or after the decedent’s death, other than property taxes and assessments secured by real property liens.

(3) Liability of the estate for funeral expenses of the decedent.

(b) “Claim” does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent’s estate.

(c) “Creditor” means a person who may have a claim against estate property.

SEC. 2. Section 9100 of the Probate Code is amended to read:

9100. (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Sixty days after the date notice of administration is ~~given~~ *mailed or personally delivered* to the creditor. Nothing in this paragraph extends the time provided in Section 366.2 of the Code of Civil Procedure.

(b) A reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a).

(c) Nothing in this section shall be interpreted to extend or toll any other statute of limitations or to revive a claim that is barred by any statute of limitations. The reference in this subdivision to a “statute of limitations” includes Section 366.2 of the Code of Civil Procedure.

SEC. 3. Section 9102 of the Probate Code is amended to read:

9102. A claim that is filed before expiration of the time for filing the claim is timely even if acted on by the personal representative or by the court after expiration of the time *for filing claims*.

1 SEC. 4. Section 9103 of the Probate Code is amended to read:

2 9103. (a) Upon petition by a creditor or the personal
3 representative, the court may allow a claim to be filed after
4 expiration of the time for filing a claim provided in Section 9100
5 if either of the following conditions is satisfied:

6 (1) The personal representative failed to send proper and
7 timely notice of administration of the estate to the creditor, and
8 that petition is filed within 60 days after the creditor has actual
9 knowledge of the administration of the estate.

10 (2) The creditor had no knowledge of the facts reasonably
11 giving rise to the existence of the claim more than 30 days prior
12 to the time for filing a claim as provided in Section 9100, and the
13 petition is filed within 60 days after the creditor has actual
14 knowledge of both of the following:

15 (A) The existence of the facts reasonably giving rise to the
16 existence of the claim.

17 (B) The administration of the estate.

18 (b) Notwithstanding subdivision (a), the court shall not allow
19 a claim to be filed under this section after the court makes an
20 order for final distribution of the estate. ~~Nothing in this~~
21 ~~subdivision authorizes allowance or approval of a claim barred~~
22 ~~by, or extends the time provided in, Section 366.2 of the Code of~~
23 ~~Civil Procedure.~~

24 (c) The court may condition the claim on terms that are just
25 and equitable, and may require the appointment or reappointment
26 of a personal representative if necessary. The court may deny the
27 creditor's petition if a payment to general creditors has been
28 made and it appears that the filing or establishment of the claim
29 would cause or tend to cause unequal treatment among creditors.

30 (d) Regardless of whether the claim is later established in
31 whole or in part, payments otherwise properly made before a
32 claim is filed under this section are not subject to the claim.
33 Except to the extent provided in Section 9392 and subject to
34 Section 9053, the personal representative or payee is not liable on
35 account of the prior payment. Nothing in this subdivision limits
36 the liability of a person who receives a preliminary distribution
37 of property to restore to the estate an amount sufficient for
38 payment of the distributee's proper share of the claim, not
39 exceeding the amount distributed.

(e) Notice of hearing on the petition shall be given as provided in Section 1220.

(f) *Nothing in this section authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure.*

SEC. 5. Section 9104 of the Probate Code is amended to read:

9104. (a) Subject to subdivision (b), if a claim is filed within the time provided in this chapter, the creditor may later amend or revise the claim. The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision to specify the amount of a claim that, at the time of filing, was not due, was contingent, or was not yet ascertainable, is not an increase in the amount of the claim within the meaning of this subdivision.

(c) An amendment or revision may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after letters are first issued to a general personal representative. *This paragraph does not extend the time provided by Section 366.2 of the Code of Civil Procedure or authorize allowance or approval of a claim barred by that section.*

SEC. 6. Section 9250 of the Probate Code is amended to read:

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Part 2 (commencing with Section 1200) of Division 3, together with a copy of the allowance or rejection.

(c) The allowance or rejection shall contain the following information:

(1) The name of the creditor.

(2) The total amount of the claim.

(3) The date of issuance of letters.

(4) The date of the decedent's death.

(5) The estimated value of the decedent's estate.

1 (6) The amount allowed or rejected by the personal
2 representative.

3 (7) Whether the personal representative is authorized to act
4 under the Independent Administration of Estates Act (Part 6
5 (commencing with Section 10400)).

6 (8) A statement that the creditor has ~~three months~~ *90 days* in
7 which to act on a rejected claim.

8 (d) The Judicial Council may prescribe an allowance or
9 rejection form, which may be part of the claim form. Use of a
10 form prescribed by the Judicial Council is deemed to satisfy the
11 requirements of this section.

12 (e) This section does not apply to a demand the personal
13 representative elects to treat as a claim under Section 9154.

14 SEC. 7. Section 9353 of the Probate Code is amended to read:

15 9353. (a) Regardless of whether the statute of limitations
16 otherwise applicable to a claim will expire before or after the
17 following times, a claim rejected in whole or in part is barred as
18 to the part rejected unless, within the following times, the
19 creditor commences an action on the claim or the matter is
20 referred to a referee or to arbitration:

21 (1) If the claim is due at the time the notice of rejection is
22 given, ~~three months~~ *90 days* after the notice is given.

23 (2) If the claim is not due at the time the notice of rejection is
24 given, ~~three months~~ *90 days* after the claim becomes due.

25 (b) The time during which there is a vacancy in the office of
26 the personal representative shall be excluded from the period
27 determined under subdivision (a).

28 SEC. 8. Section 19000 of the Probate Code is amended to
29 read:

30 19000. As used in this part:

31 (a) "Claim" means a demand for payment for any of the
32 following, whether due, not due, accrued or not accrued, or
33 contingent, and whether liquidated or unliquidated:

34 (1) Liability of the deceased settlor, whether arising in
35 contract, tort, or otherwise.

36 (2) Liability for taxes incurred before the deceased settlor's
37 death, whether assessed before or after the deceased settlor's
38 death, other than property taxes and assessments secured by real
39 property liens.

40 (3) Liability for the funeral expenses of the deceased settlor.

1 (b) “Claim” does not include a dispute regarding title to
2 specific property alleged to be included in the trust estate.

3 (c) ~~“Claimant”~~ “*Creditor*” means a person who may have a
4 claim, ~~as defined in subdivision (a), against the trust property and~~
5 ~~who has filed a timely claim pursuant to Section 19100.~~

6 (d) “Trust” means a trust described in Section 18200, or, if a
7 portion of a trust, that portion that remained subject to the power
8 of revocation at the deceased settlor’s death.

9 (e) “Deceased settlor” means a deceased person who, at the
10 time of his or her death, held the power to revoke the trust in
11 whole or in part.

12 (f) “Debts” means all claims, as defined in subdivision (a), all
13 expenses of administration, and all other proper charges against
14 the trust estate, including taxes.

15 SEC. 9. Section 19011 of the Probate Code is amended to
16 read:

17 19011. (a) The Judicial Council may prescribe the form and
18 contents of the petition, notice, claim form, and allowance or
19 rejection form to be used pursuant to this part. The allowance or
20 rejection form may be part of the claim form.

21 (b) Any claim form adopted by the Judicial Council shall
22 inform the ~~claimant~~ *creditor* that the claim must be filed with the
23 court and a copy mailed or delivered to the trustee. The claim
24 form shall include a proof of mailing or delivery of a copy of the
25 claim to the trustee, which may be completed by the claimant.

26 SEC. 10. Section 19022 of the Probate Code is amended to
27 read:

28 19022. (a) A proceeding under this chapter is commenced by
29 filing a verified petition stating facts showing that the petition is
30 authorized under this chapter and the grounds of the petition.

31 (b) The petition shall set forth a description of the trust and the
32 names of ~~claimants~~ *creditors* with respect to which action is
33 requested and a description of each claim, together with the
34 requested determination by the court with respect to the claims,
35 provided, however, that this section does not require the filing of
36 a copy of the trust or disclosure of the beneficial interests of the
37 trust. That petition shall also set forth the beneficiaries of the
38 trust, those claimants whose interest in the trust may be affected
39 by the petition, and the trustees of any other trust to which an

1 allocation of liability may be approved by the court pursuant to
2 the petition.

3 (c) The clerk shall set the matter for hearing.

4 SEC. 11. Section 19023 of the Probate Code is amended to
5 read:

6 19023. At least 30 days before the time set for the hearing on
7 the petition, the petitioner shall cause notice of the time and place
8 of the hearing and a copy of the petition to be served on each of
9 ~~the claimants~~ *creditors* whose interests in the estate may be
10 affected by the petition in the manner provided in Chapter 4
11 (commencing with Section 413.10) of Title 5 of Part 2 of the
12 Code of Civil Procedure.

13 SEC. 12. Section 19025 of the Probate Code is amended to
14 read:

15 19025. (a) If any ~~claimant~~ *creditor*, beneficiary, or trustee
16 fails timely to file a written pleading upon notice, then the case is
17 at issue, notwithstanding the failure. The case may proceed on
18 the petition and written statements filed by the time of the
19 hearing, and no further pleadings by other persons are necessary.
20 The ~~claimant~~ *creditor*, beneficiary, or trustee who failed timely to
21 file a written pleading upon notice may not participate further in
22 the proceeding for the determination requested, and that ~~claimant~~
23 *creditor*, beneficiary, or trustee shall be bound by the decision in
24 the proceeding.

25 (b) The court's order, when final, shall be conclusive as to the
26 liability of the trust property with respect to the claims at issue in
27 the petition. In the event of a subsequent administration of the
28 estate of the deceased settlor, that order shall be binding on the
29 personal representative of the estate of the deceased settlor as
30 well as all ~~claimants~~ *creditors* and beneficiaries who had notice
31 of the petition.

32 SEC. 13. Section 19040 of the Probate Code is amended to
33 read:

34 19040. (a) Publication of notice pursuant to this section shall
35 be for at least 15 days. Three publications in a newspaper
36 published once a week or more often, with at least five days
37 intervening between the first and last publication dates, not
38 counting the first and last publication dates as part of the five-day
39 period, are sufficient. Notice shall be published in a newspaper of
40 general circulation in the city, county, or city and county in this

1 state where the deceased settlor resided at the time of death, or if
2 none, in the city, county, or city and county in this state wherein
3 trust property was located at the time of the settlor's death, or if
4 none, in the city, county, or city and county in this state wherein
5 the principal place of administration of the trust was located at
6 the time of the settlor's death. If there is no newspaper of general
7 circulation published in the applicable city, county, or city and
8 county, notice shall be published in a newspaper of general
9 circulation published in this state nearest to the applicable city,
10 county, or city and county seat, and which is circulated within the
11 applicable city, county, or city and county. If there is no such
12 newspaper, notice shall be given in written or printed form,
13 posted at three of the most public places within the community.
14 For purposes of this section, "city" means a charter city as
15 defined in Section 34101 of the Government Code or a general
16 law city as defined in Section 34102 of the Government Code.

17 (b) The caption of the notice, the deceased settlor's name, and
18 the name of the trustee shall be in at least 8-point type, the text of
19 the notice shall be in at least 7-point type, and the notice shall
20 state substantially as follows:

21 NOTICE TO CREDITORS

22 OF _____

23 # _____

24 SUPERIOR COURT OF CALIFORNIA

25 COUNTY OF _____

26 Notice is hereby given to the creditors and contingent creditors
27 of the above-named decedent, that all persons having claims
28 against the decedent are required to file them with the Superior
29 Court, at _____, and mail a copy to _____, as trustee of the
30 trust dated _____ wherein the decedent was the settlor, at _____,
31 within the later of four months after _____ (the date of the first
32 publication of notice to creditors) or, if notice is mailed or
33 personally delivered to you, ~~30~~ 60 days after the date this notice
34 is mailed or personally delivered to you. A claim form may be
35 obtained from the court clerk. For your protection, you are
36 encouraged to file your claim by certified mail, with return
37 receipt requested.

38
39
40 (name and address of trustee or attorney)

(c) An affidavit showing due publication of notice shall be filed with the clerk upon completion of the publication. The affidavit shall contain a copy of the notice, and state the date of its first publication.

SEC. 14. Section 19050 of the Probate Code is amended to read:

19050. ~~(a) If Except as provided in Section 19054, if the trustee has knowledge of a creditor of the deceased settlor, the trustee shall give notice to the creditor, unless notice is not required pursuant to Section 19054.~~ The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a trustee has knowledge of a creditor of the deceased settlor if the trustee is aware that the creditor has demanded payment from the deceased settlor or the trust estate.

~~(b) The provision of notice under this chapter is in addition to the publication of notice under Section 19040.~~

SEC. 15. Section 19051 of the Probate Code is amended to read:

19051. ~~(a) Except as provided in subdivision (b) or (c), the~~ The notice shall be given ~~within four~~ before expiration of the later of the following times:

(a) Four months after the first publication of notice under Section 19040.

(b) ~~If the trustee first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30~~ Thirty days after the trustee first has knowledge of the creditor.

~~(c) If the trustee first has knowledge of a creditor after expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the trustee first has knowledge of the creditor.~~

SEC. 16. Section 19052 of the Probate Code is amended to read:

19052. The notice shall be in substantially the following form:

NOTICE TO CREDITORS

OF _____

SUPERIOR COURT OF CALIFORNIA

COUNTY OF _____

1 Notice is hereby given to the creditors and contingent creditors
2 of the above-named decedent, that all persons having claims
3 against the decedent are required to file them with the Superior
4 Court, at _____, and mail or deliver a copy to _____, as
5 trustee of the trust dated _____ wherein the decedent was the
6 settlor, at _____, within the later of four months after _____
7 (the date of the first publication of notice to creditors) or, if
8 notice is mailed or personally delivered to you, ~~30~~ 60 days after
9 the date this notice is mailed or personally delivered to you, or
10 you must petition to file a late claim as provided in Section
11 19103 of the Probate Code. A claim form may be obtained from
12 the court clerk. For your protection, you are encouraged to file
13 your claim by certified mail, with return receipt requested.
14
15

16 _____
17 (Date of mailing this notice if applicable) (name and address of
18

19 trustee or attorney)

20 SEC. 17. Section 19053 of the Probate Code is amended to
21 read:

22 19053. (a) If the trustee believes that notice to a particular
23 creditor is or may be required by this chapter and gives notice
24 based on that belief, the trustee is not liable to any person for
25 giving the notice, whether or not required by this chapter.

26 (b) If the trustee fails to give notice required by this chapter,
27 the trustee is not liable to any person for that failure, unless a
28 creditor establishes all of the following:

29 (1) The failure was in bad faith.

30 (2) ~~Neither the~~ *The* creditor ~~nor the attorney representing the~~
31 ~~creditor in the matter had~~ *did not have* actual knowledge of the
32 proceedings under Chapter 1 (commencing with Section 19000)
33 sooner than one year after publication of notice to creditors under
34 Section 19040, and payment would have been made on the
35 creditor's claim if the claim had been properly filed.

36 (3) Within 16 months after the first publication of notice under
37 Section 19040, the creditor did both of the following:

38 (A) Filed a petition requesting that the court in which the
39 proceedings under Chapter 1 (commencing with Section 19000)

1 were initiated make an order determining the liability of the
2 trustee under this subdivision.

3 (B) At least 30 days before the hearing on the petition, caused
4 notice of the hearing and a copy of the petition to be served on
5 the trustee in the manner provided in Chapter 4 (commencing
6 with Section 413.10) of Title 5 of Part 2 of the Code of Civil
7 Procedure.

8 (c) Nothing in this section affects the liability of the trust
9 estate, if any, for the claim of a creditor, and the trustee is not
10 liable to the extent the claim is paid out of the trust estate.

11 (d) Nothing in this chapter imposes a duty on the trustee to
12 make a search for creditors of the deceased settlor.

13 SEC. 18. Section 19100 of the Probate Code is amended to
14 read:

15 19100. (a) ~~A claimant~~ *creditor* shall file a claim before
16 expiration of the later of the following times:

17 (1) Four months after the first publication of notice to creditors
18 under Section 19040.

19 (2) ~~Thirty~~ *Sixty* days after the date actual notice is mailed or
20 personally delivered to the creditor, ~~if notice is given within the~~
21 ~~time provided in subdivision (a) or (b) of Section 19051. This~~
22 ~~paragraph does not extend the time provided in Section 366.2 of~~
23 ~~the Code of Civil Procedure.~~

24 (b) ~~Notwithstanding Section 19103, a~~ A reference in another
25 statute to the time for filing a claim means the time provided in
26 paragraph (1) of subdivision (a), ~~unless the provision or context~~
27 ~~requires otherwise.~~

28 (c) *This section shall not be interpreted to extend or toll any*
29 *other statute of limitations, including that provided by Section*
30 *366.2 of the Code of Civil Procedure.*

31 SEC. 19. Section 19103 of the Probate Code is amended to
32 read:

33 19103. (a) ~~Upon~~ *Except as provided in subdivision (b), upon*
34 ~~petition by a claimant and upon giving notice of hearing in the~~
35 ~~manner and to the person set forth in Section 19024~~ *creditor or a*
36 *trustee*, the court may allow a claim to be filed after expiration of
37 the time *for filing a claim* provided in Section 19100 ~~if it appears~~
38 ~~that either of the following conditions are satisfied:~~

39 (1) ~~Neither the claimant nor the attorney representing the~~
40 ~~claimant in the matter had actual knowledge of the proceeding~~

1 under this part more than 15 days before expiration of the time
2 provided in Section 19100, and the claimant's petition was filed
3 within 30 days after either the claimant or the claimant's attorney
4 had actual knowledge of the proceeding whichever occurred first
5 *The trustee failed to send proper and timely notice to the creditor*
6 *and the petition is filed within 60 days after the creditor has*
7 *actual knowledge of the administration of the trust.*

8 (2) ~~Neither the claimant nor the attorney representing the~~
9 ~~claimant in the matter had knowledge of the existence of the~~
10 ~~claim more than 15 days before expiration of the time provided~~
11 ~~in Section 19100 and the claimant's petition was filed within 30~~
12 ~~days after either the claimant or the claimant's attorney had~~
13 ~~knowledge of the existence of the claim whichever occurred first.~~
14 *The creditor did not have knowledge of the facts giving rise to*
15 *the existence of the claim more than 30 days prior to the time for*
16 *filing a claim as provided in Section 19100, and the petition is*
17 *filed within 60 days after the creditor has actual knowledge of*
18 *both of the following:*

19 (A) *The existence of the facts reasonably giving rise to the*
20 *existence of the claim.*

21 (B) *The administration of the trust.*

22 (b) ~~The Notwithstanding subdivision (a), the court shall not~~
23 allow a claim to be filed under this section more than one year
24 after the date of first publication of notice to creditors under
25 Section 19040. Nothing in this subdivision authorizes allowance
26 or approval of a claim barred by, or extends the time provided in,
27 Section 366.2 of the Code of Civil Procedure.

28 (c) The court may condition the claim on terms that are just
29 and equitable. The court may deny the claimant's petition if a
30 distribution to trust beneficiaries or payment to general creditors
31 has been made and it appears the filing or establishment of the
32 claim would cause or tend to cause unequal treatment among
33 beneficiaries or creditors.

34 (d) Regardless of whether the claim is later established in
35 whole or in part, property distributed under the terms of the trust
36 subsequent to an order settling claims under Chapter 2
37 (commencing with Section 19020) and payments otherwise
38 properly made before a claim is filed under this section are not
39 subject to the claim. Except to the extent provided in Chapter 12
40 (commencing with Section 19400) and subject to Section 19053,

1 the trustee, distributee, or payee is not liable on account of the
2 prior distribution or payment. *This subdivision does not limit the*
3 *liability of a person who recedes a preliminary distribution of*
4 *property to restore to the trust an amount sufficient for payment*
5 *of the beneficiary's proper share of the claim, not exceeding the*
6 *amount distributed.*

7 SEC. 20. Section 19104 of the Probate Code is amended to
8 read:

9 19104. (a) Subject to subdivision (b), if a claim is filed
10 within the time provided in this chapter, the ~~claimant~~ creditor
11 may later amend or revise the claim. The amendment or revision
12 shall be filed in the same manner as the claim.

13 (b) An amendment or revision may not be made to increase
14 the amount of the claim after the time for filing a claim has
15 expired. An amendment or revision to specify the amount of a
16 claim that, at the time of filing, was not due, was contingent, or
17 was not yet ascertainable, is not an increase in the amount of the
18 claim within the meaning of this subdivision. An amendment or
19 revision of a claim may not be made for any purpose after the
20 earlier of the following times:

21 (1) The time the court makes an order approving settlement of
22 the claim against the deceased settlor under Chapter 2
23 (commencing with Section 19020).

24 (2) One year after the date of the first publication of notice to
25 creditors under Section 19040. Nothing in this paragraph
26 authorizes allowance or approval of a claim barred by, or extends
27 the time provided in, Section 366.2 of the Code of Civil
28 Procedure.

29 SEC. 21. Section 19150 of the Probate Code is amended to
30 read:

31 19150. (a) A claim may be filed by the ~~claimant~~ creditor or a
32 person acting on behalf of the claimant.

33 (b) A claim shall be filed with the court and a copy shall be
34 mailed to the trustee. Failure to mail a copy to the trustee does
35 not invalidate a properly filed claim, but any loss that results
36 from the failure shall be borne by the ~~claimant~~ creditor.

37 SEC. 22. Section 19151 of the Probate Code is amended to
38 read:

39 19151. (a) A claim shall be supported by the affidavit of the
40 ~~claimant~~ creditor or the person on behalf of the claimant stating:

1 (1) The claim is a just claim.

2 (2) If the claim is due, the facts supporting the claim, the
3 amount of the claim, and that all payments on and offsets to the
4 claim have been credited.

5 (3) If the claim is not due or contingent, or the amount is not
6 yet ascertainable, the facts supporting the claim.

7 (4) If the affidavit is made by a person other than the ~~claimant~~
8 *creditor*, the reason it is not made by the ~~claimant~~ *creditor*.

9 (b) The trustee may require satisfactory vouchers or proof to
10 be produced to support the claim. An original voucher may be
11 withdrawn after a copy is provided. If a copy is provided, the
12 copy shall be attached to the claim.

13 SEC. 23. Section 19154 of the Probate Code is amended to
14 read:

15 19154. (a) Notwithstanding any other provision of this part,
16 if a ~~claimant~~ *creditor* makes a written demand for payment
17 within the time specified in Section 19100, the trustee may waive
18 formal defects and elect to treat the demand as a claim that is
19 filed and established under this part by paying the amount
20 demanded.

21 (b) Nothing in this section limits application of the doctrines
22 of waiver, estoppel, laches, or detrimental reliance or any other
23 equitable principle.

24 SEC. 24. Section 19252 of the Probate Code is amended to
25 read:

26 19252. The trustee shall have the power to pay any claim or
27 portion of a claim and payment shall constitute allowance of the
28 claim to the extent of the payment. The trustee shall have the
29 power to compromise any claim or portion of a claim. If the
30 trustee or the attorney for the trustee is a ~~claimant~~ *creditor* of the
31 deceased settlor, the trustee shall have the same powers regarding
32 allowance, rejection, payment, or compromise set forth in this
33 chapter.

34 SEC. 25. Section 19255 of the Probate Code is amended to
35 read:

36 19255. (a) A rejected claim is barred as to the part rejected
37 unless the ~~claimant~~ *creditor* brings an action on the claim or the
38 matter is referred to a referee or to arbitration within the
39 following times, excluding any time during which there is a
40 vacancy in the office of the trustee:

1 (1) If the claim is due at the time of giving the notice of
2 rejection, 90 days after the notice is given.

3 (2) If the claim is not due at the time of giving the notice of
4 rejection, 90 days after the claim becomes due.

5 (b) In addition to any other county in which an action on a
6 rejected claim may be commenced, the action may be
7 commenced in the county or city and county wherein the
8 principal place of administration of the trust is located.

9 (c) ~~The claimant~~ *creditor* shall file a notice of the pendency of
10 the action or the referral to a referee or to arbitration with the
11 court clerk in the trust proceeding, together with proof of giving
12 a copy of the notice to the trustee as provided in Section 1215.
13 Personal service of a copy of the summons and complaint on the
14 trustee is equivalent to the filing and giving of the notice.

15 (d) Any property distributed by the trustee under the terms of
16 the trust after 120 days from the later of the time the notice of
17 rejection is given or the claim is due and before the notice of
18 pendency of action or referral or arbitration is filed and given,
19 excluding therefrom any time during which there is a vacancy in
20 the office of the trustee, is not subject to the claim. Neither the
21 trustee nor the distributee is liable on account of the distribution.

22 (e) The prevailing party in the action shall be awarded court
23 costs and, if the court determines that the prosecution or defense
24 of the action against the prevailing party was unreasonable, the
25 prevailing party shall be awarded reasonable litigation expenses,
26 including attorney's fees. For the purpose of this subdivision, the
27 prevailing party shall be the trustee if the creditor recovers an
28 amount equal to or less than the amount of the claim allowed by
29 the trustee, and shall be the creditor if the creditor recovers an
30 amount greater than the amount of the claim allowed by the
31 trustee.